FILED
FEB 18 192
CHARLES ELMORE CR
CL

NO. 130

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

OLD COLONY TRUST COMPANY, ET AL.,
Executors,

v.

COMMISSIONER OF INTERNAL REVENUE.

On Certificate From the United States Circuit Court of Appeals for the First Circuit.

BRIEF AS AMICUS CURIAE BY LEAVE OF THE COURT.

JAMES WALTON,
Amicus Curiae.

Pittsburgh, Penna.,
February 11, 1929.

SMITH BROS. CO. INC., LAW PRINTERS, 208-212 GRANT STREET, PITTSBURGH, PA.

INDEX.

PAGE

Motion for Leave to File Brief as Amicus Curiae 1

I.

Is There, as a Matter of Law, a Petition for Review of a Decision of the Board of Tax Appeals of Which an Appellate Court Will or Should Take Jurisdiction? 3

What the Board of Tax Appeals Is 3

II.

Jurisdiction of the Board of Tax Appeals 5

III.

Board of Tax Appeals Has No Judicial Power to Compel the Attendance of Witnesses 7

IV.

The Attitude of the Federal Courts Respecting the Extent of the Jurisdiction of the Board of Tax Appeals 8

V.

The Commissioner Has Power to Withhold Jurisdiction From the Board of Tax Appeals 9

VI.

What Will the Supreme Court Say When Asked to Review a Determination of the Board of Tax Appeals? 10

VII.

The Board By Its Own Rules Recognizes That It Is Not a Court 12

VIII.

Conclusion Unescapable 13

IX.

PAGE

The Constitution of the United States Reads..... 14

X.

The Jurisdiction of the Circuit Court of Appeals Over Orders of the Federal Trade Commission, Interstate Commerce Commission and Federal Reserve Board As Contrasted With No Mention of the Board of Tax Appeals..... 17

XI.

No Change of Venue From the Board of Tax Appeals 18

XII.

Far From Being a Court..... 19

XIII.

Already the Supreme Court Has Made a Strong Intimation of Its Viewpoint 20

XIV.

To Assume Jurisdiction Will Make the Decisions of This Court Utterly Irreconcilable..... 21

XVI.

On the Subject of Confusion and Expediency..... 22

Cases Cited.

	PAGE
Abraham Salikoff v. Blakely D. McCaughn, D. C. E. D. Penna.	10
Appeal of Everett Knitting Works, 1 B. T. A. 6	14
Appeal of C. L. Green, 2 B. T. A. 149	5
Astrom v. Hammond, 3 McLean (U. S.) 107	15
Avery v. Blair, 5th C. C. A. 22 Fed. (2nd) 6	19
Blair v. Oesterlein Machine Co., 275 U. S. 220	21
Chicago Railway Equipment Co. v. Blair, Com., U. S. C. C. A. 7th Circuit	5
Emery v. U. S., 27 F. (2nd) 992	22
Georgia v. Stanton, 6 Wall. 71, 18 U. S. (L. Ed.) 721	15
Gordon v. U. S., 117 U. S. 697	12, 14
Holmes and Brewster's Federal Tax Appeals (1927) 156	7
Interstate Commerce Com. v. Illinois Cent. R. Co., 215 U. S. 452, 30 S. Ct. 155, 54 U. S. (L. Ed.) 280	15
Keim v. U. S., 177 U. S. 293, 20 S. Ct. 574, 44 U. S. (L. Ed.) 774	15
Kentucky, etc., Bridge Co. v. Louisville, etc., R. Co., 37 Fed. 614	16
Mertz v. Mellon et al	8
Muskrat v. U. S., 219 U. S. 346, 31 S. Ct. 250, 55 U. S. (L. Ed.) 246	16
Old Colony R. Co. v. U. S., 27 F. (2nd) 994	22
Stephens v. Cherokee Nation, 174 U. S. 477, 19 S. Ct. 722, 43 U. S. (L. Ed.) 1041	15
U. S. ex rel. McCandless v. Board of Tax Appeals	8
U. S. v. Ferreira, 13 How. 48, 14 U. S. (L. Ed.) 42	16
Williamsport Wire Rope Co. v. U. S., 277 U. S. 551	20

IN THE SUPREME COURT OF THE UNITED STATES.

OLD COLONY TRUST COMPANY, ET AL., Executors, v. COMMISSIONER OF INTERNAL REVENUE	October Term, 1928.

Motion for Leave to File Brief as Amicus Curiae.

Comes now, James Walton, Esquire, of Pittsburgh, having received the permission of counsel for the plaintiffs herein, and respectfully moves the court for permission to file a brief as *amicus curiae* in the above cause.

JAMES WALTON.

Pittsburgh, Penna.,
February 11, 1929.